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February 19, 2009

Elizabeth Rolando
Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701

RE: Docket No. 08-0548

Dear Chief Rolando:

In 2007 we were chief sponsors of SB 1366 (later enacted as Public Act 95-0679 and codified at 220 ILCS 5/16-115C), an important consumer protection law that passed both houses unanimously. As chief sponsors, we were responsible for passing SB 1366, and have a unique interest in seeing the law executed properly. We are writing to you today to express our concern with the rulemaking process in the above-captioned proceeding.

We believe that the Proposed Rules issued on January 15, 2009, fail to carry out the legislative intent behind this very important consumer protection law, and even contradict the express statutory language. We fear that if these errors are not remedied, Illinois consumers will be deprived the benefit of this law and will suffer as a result. We call upon you today to ensure that this does not happen.

As the chief sponsors of this law, we are well-positioned to explain the intent of this legislation, which should, in turn, assist you in creating rules that carry out the will of the Legislature. Unequivocally, this law was intended to protect retail electric consumers in this State from deceptive sales tactics by agents, brokers and consultants in the retail electricity market. The two biggest concerns that we saw that needed addressing were: (1) the failure to disclose to customers the amount of money these agents, brokers and consultants were charging (either directly or indirectly, as retail customers ultimately paid the bill); and (2) the lack of any standards or qualifications to hold one's self out as an expert in this area. In crafting rules, the Commission must keep in mind at all times that Illinois consumers are the ones to be protected against unscrupulous business activities.

To that end, we are gravely concerned with the proposed definitions of "Attempts to procure" and "Attempts to sell" found in Section 454.20. We believe that the current language would create unacceptable loopholes that will eliminate the consumer protection measures that we included in this bill. We will take each definition in turn.

"Attempts to Procure"

We believe that the Commission would make a serious mistake in moving forward with the proposed definition as it relates to the requirement that the agent, broker or consultant must have

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"authority . . . to purchase or enter into a contract to purchase . . . on said customer's behalf." As chief sponsors, we assure you that we never intended such a narrow application of these protections. As we understand the market, the scenario this definition describes is one that rarely, if ever, actually occurs. We fail to see any support for the creation of this power-of-attorney requirement, and we fear that Illinois consumers will suffer as a result, as the Commission will be excluded from jurisdiction over the vast majority of agents, brokers and consultants who may be attempting to procure on behalf of Illinois consumers. The legislative intent will not be carried out by the Proposed Rules. We urge you to eliminate that qualifying language from this definition.

"Attempts to Sell"

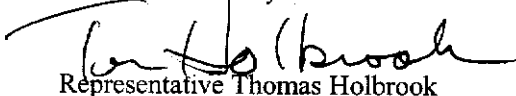
Likewise, we are concerned that the Commission has created another impermissible loophole that will thwart the important consumer protections contained in this law. As we indicated earlier, one vital aspect of this legislation is the disclosure of pricing information to customers in a clear, understandable manner, so that they may make a meaningful analysis of an offer from an agent, broker or consultant. The way that "attempts to sell" is currently defined, however, the Commission invites those that should be regulated to easily skirt the law. The law requires, among other things, that those so regulated disclose, in writing and in plain language, the total amount of money the agent, broker or consultant anticipates receiving **from any third party**. The current definition of "attempts to sell" however, only regulates those agents, brokers and consultants paid directly by a retail electric supplier (to the exclusion of payments by any other third parties). This invites gaming of the system, either through payments by a middleman, the use of shell companies or affiliates, or any number of clandestine but technically legal methods to evade the law's regulations. This is not what was intended, and runs expressly counter to the language of the statute. We once again strongly urge you to revise this language, and to focus on payments made by any third party, not merely those made directly by a retail electric supplier.

Public Act 95-0679 was intended as a strong statement in support of these consumer protections in the retail electricity markets in this State, with a recognition that competition works best when there is a proper amount of oversight.

Sincerely yours,



Senator James Clayborne


Representative Thomas Holbrook

Cc: Chairman Charles Box
Commissioner Lula Ford
Commissioner Robert Lieberman
Commissioner Erin O'Connell-Diaz
Commissioner Sherman Elliott